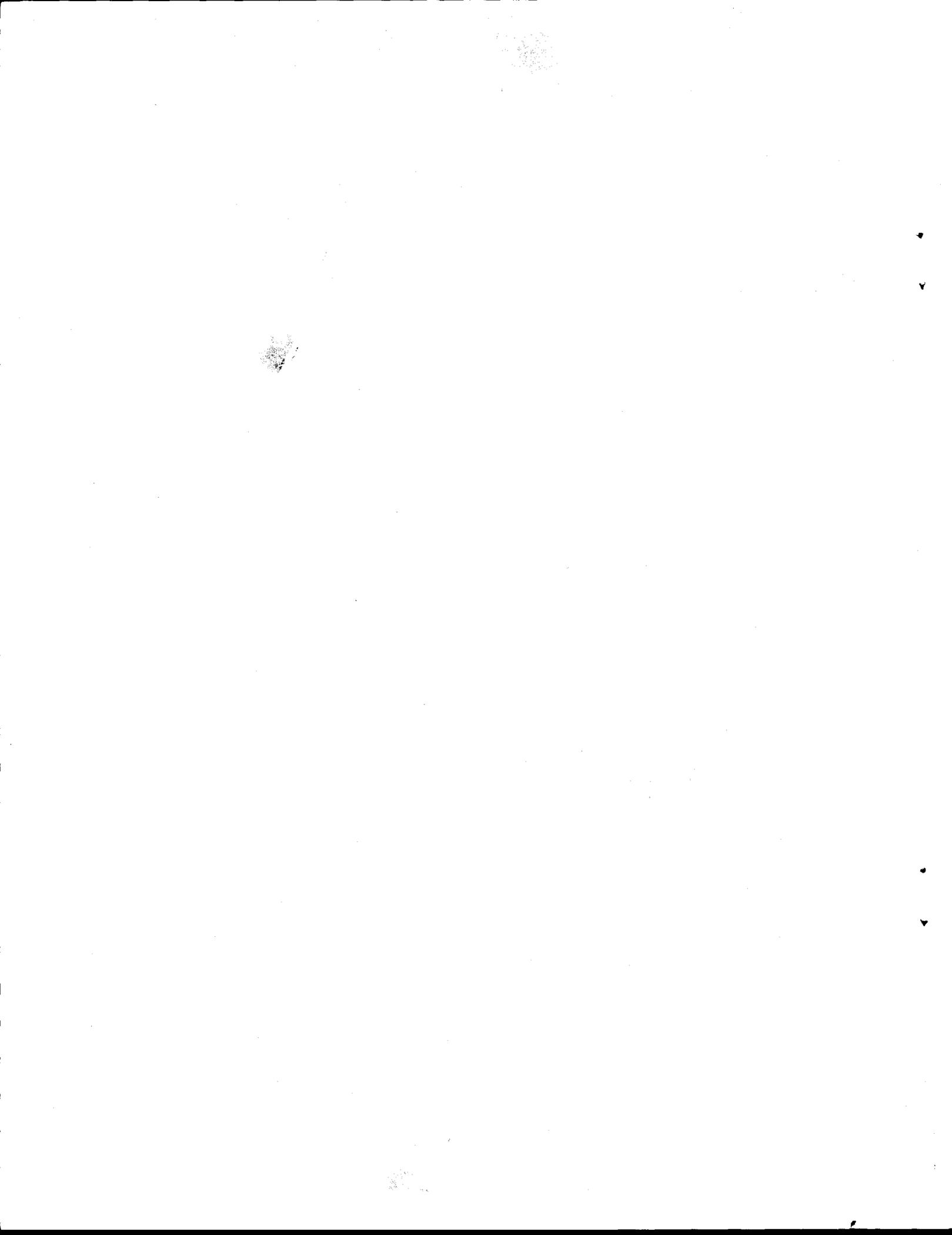


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LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

ASSESSMENT REPORTS 1987-88

| | |
|----------------------------|-----------------|
| RESPIRATORY THERAPIST | (HB 585) |
| DIETICIANS/NUTRITIONISTS | (SB 420/HB 428) |
| FIRE PROTECTION CONTRACTOR | (SB 704) |
| COUNSELORS | (SB 432) |
| NAIL SCULPTORS | (HB 1207) |



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ASSESSMENT REPORTS

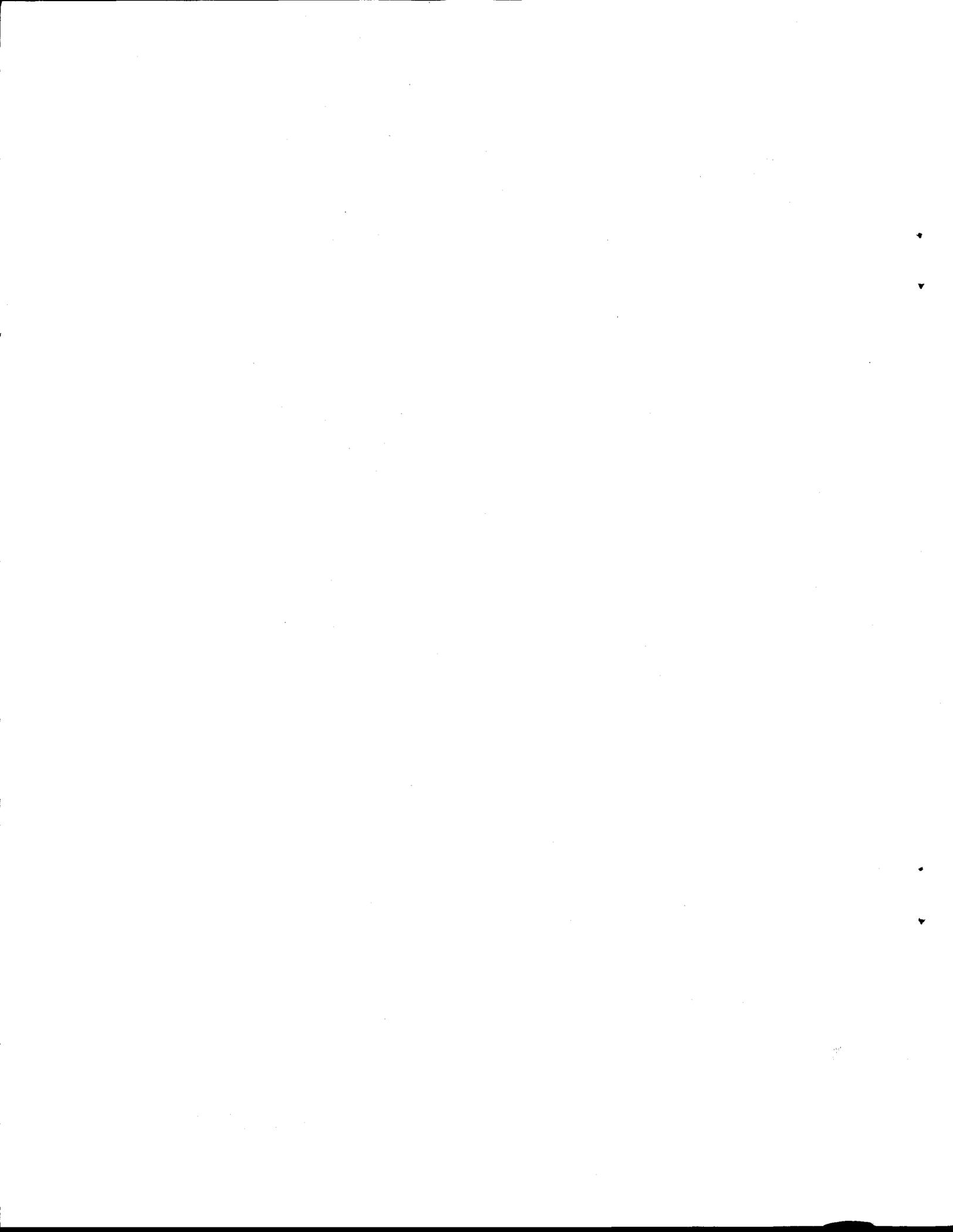
Article 18A of Chapter 120 of the General Statutes requires that each bill proposing to create an occupational or professional licensing board be submitted to the Legislative Committee on New Licensing Boards for review prior to debate on the bill. The Committee reviews each bill to determine whether licensing is appropriate and makes a non-binding recommendation to the General Assembly.

During the 1987 session, the Legislative Committee on New Licensing Boards issued preliminary and final reports on the following bills:

| | |
|---------------|-----------------------------|
| HB 585 | Respiratory Care Therapists |
| HB 428/SB 420 | Dieticians/Nutritionists |
| SB 704 | Fire Protection Contractors |
| SB 432 | Counselors |
| HB 1207 | Nail Sculptors |

In the preliminary reports, licensing was recommended for only one group: the respiratory care therapists. In the final reports, both the respiratory care therapists and the dietitian/nutritionists were recommended for licensing.

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MEMBERSHIP OF THE
LEGISLATIVE COMMITTEE ON
NEW LICENSING BOARDS
1987-88

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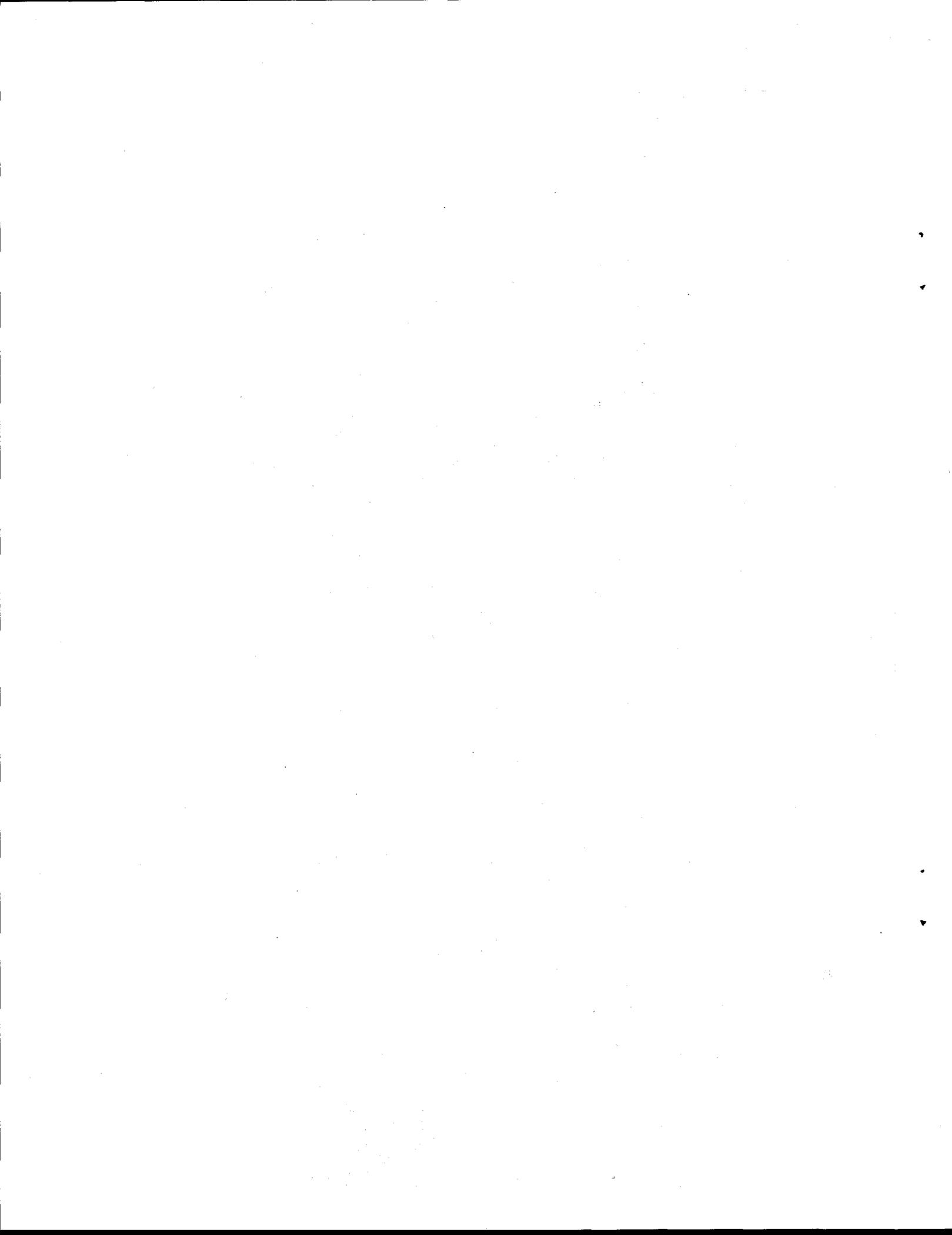
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Mr. Linwood Jones, Counsel



**LEGISLATIVE COMMITTEE ON
NEW LICENSING BOARDS**

**Preliminary Assessment Report on the Licensing of
Respiratory Care Therapists**

(House Bill 585)

August 10, 1987



RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly consider legislation proposing the licensing of respiratory care therapists.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of respiratory care therapy can substantially harm or endanger the public health, safety, or welfare and the potential for such harm is recognizable.

There are nearly 1,900 persons practicing respiratory care in North Carolina. Although many of these practitioners have received formal training and have voluntarily been certified by the National Board for Respiratory Care, over one-fourth of the persons practicing respiratory care lack formal training.

Approximately 27% of all hospital admissions now require respiratory care services. Although many hospitals require formal training and/or certification of their respiratory care practitioners, other hospitals and health care facilities do not. In addition, there are nearly 11,000 home health care patients who receive home respiratory care. Although state law provides generally for the supervision of home health care workers, including respiratory care therapists, and requires these workers to be assigned only to duties for which they are properly trained (see #6 of this report), there are no specific requirements on the amount of training required of respiratory care workers in home health care agencies. The adequacy of the supervision of these workers has also been questioned (see Questionnaire, #II.A.).

The Committee finds that in view of the increasing number of consumers of respiratory care services, the number of untrained therapists, the skill and knowledge required to practice respiratory therapy, and the often life-threatening results of improperly administered respiratory care services, the unregulated practice of respiratory care therapy can substantially endanger or harm the public health, safety, or welfare.

(2) The practice of respiratory care therapy possesses qualities that distinguish it from ordinary labor.

The practice of respiratory care involves the individual judgment and diagnostic skills of the respiratory therapist in administering respiratory care to patients. The therapist also advises and serves as a resource to the patients' attending physicians on respiratory care matters.

(3) The practice of respiratory care therapy requires specialized skill and training.

Respiratory care therapy involves the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The skills required of a respiratory care therapist include, among other skills, the administration of medical gases, breathing treatments, delivery or pharmacological agents, use of life support equipment, cardiopulmonary resuscitation, insertion of artificial airways, arterial blood sampling, pulmonary function testing, and heart function measurements.

Respiratory care therapy also involves both classroom and clinical instruction. House Bill 585 would require a high school education, completion of an accredited respiratory care educational program, and passage of an examination -- similar to the requirements currently required for voluntary certification.

(4) A substantial majority of the public do not have sufficient knowledge or experience to evaluate the competence of respiratory care therapists.

Hospitals and home health care agencies are able to determine the qualifications of persons they hire to perform respiratory care services. However, not all hospitals and home health care agencies require formal training of their respiratory care therapists. Patients using the services of the hospitals or home health care agencies are therefore in no position to know whether their respiratory therapist is qualified.

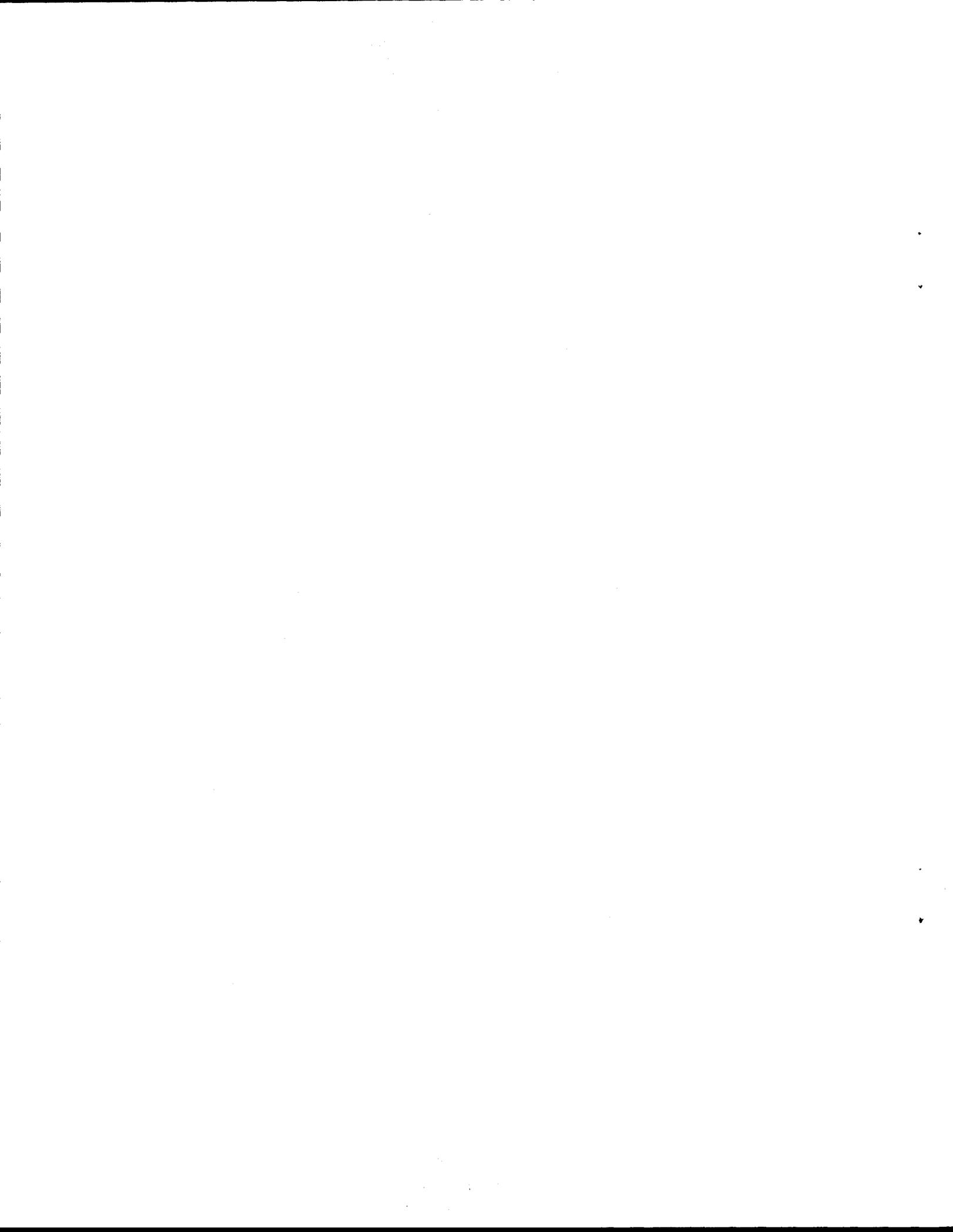
(5) The Committee makes no determination whether licensure of respiratory care therapists would have a substantial adverse economic impact upon consumers of the respiratory care therapists' services.

(6) The public cannot be effectively protected by other means.

Training, examination, and certification of respiratory care therapists is completely voluntary at this time. Although some hospitals and home health care agencies require certification or equivalent training, many do not. This is particularly troubling in the home health care setting. By law, persons working for home health care agencies, including respiratory therapists, must be under the supervision of either a licensed physician or a registered nurse in providing services in accordance with the orders of the physician responsible for the care of the patient and under a plan of treatment established by such physician (10 N.C.A.C. 3L.0205(c)). However, this supervision is not the same direct supervision by a physician provided in the hospital setting.

The law also requires that persons who work for home health care agencies be assigned only to those duties for which they are trained and competent to perform (10 N.C.A.C. 3L.0207(c)). However, there are no mandatory standards to determine whether an individual, such as a respiratory therapist, is "trained and competent" to perform the work to which he is assigned by the home health care agency.

Thus, although there has been some attempt to regulate the adequacy, reliability, and safety of respiratory care services, both through health care providers' employment requirements and through general laws relating to home health care personnel, these regulations and restraints do not seem to effectively protect the public.

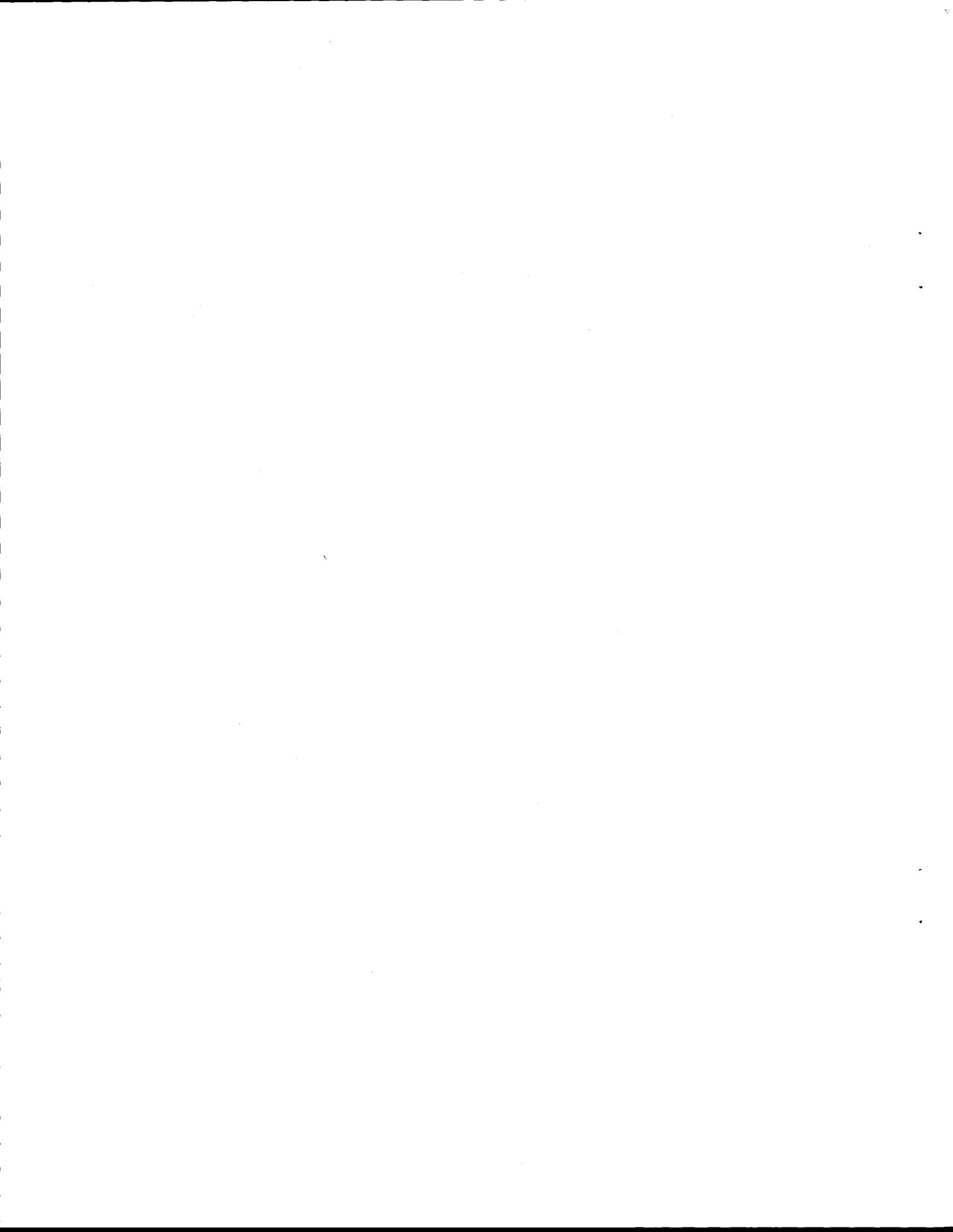


LEGISLATIVE COMMITTEE ON
NEW LICENSING BOARDS

Final Assessment Report on the Licensing of
Respiratory Care Therapists

(House Bill 585)

August 12, 1987



RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly consider legislation proposing the licensing of respiratory care therapists.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of respiratory care therapy can substantially harm or endanger the public health, safety, or welfare and the potential for such harm is recognizable.

There are nearly 1,900 persons practicing respiratory care in North Carolina. Although many of these practitioners have received formal training and have voluntarily been certified by the National Board for Respiratory Care, over one-fourth of the persons practicing respiratory care lack formal training.

Approximately 27% of all hospital admissions now require respiratory care services. Although many hospitals require formal training and/or certification of their respiratory care practitioners, other hospitals and health care facilities do not. In addition, there are nearly 11,000 home health care patients who receive home respiratory care. Although state law provides generally for the supervision of home health care workers, including respiratory care therapists, and requires these workers to be assigned only to duties for which they are properly trained (see #6 of this report), there are no specific requirements on the amount of training required of respiratory care workers in home health care agencies. The adequacy of the supervision of these workers has also been questioned (see Questionnaire, #II.A.).

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(2) The practice of respiratory care therapy possesses qualities that distinguish it from ordinary labor.

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Respiratory care therapy involves the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The skills required of a respiratory care therapist include, among other skills, the administration of medical gases, breathing treatments, delivery or pharmacological agents, use of life support equipment, cardiopulmonary resuscitation, insertion of artificial airways, arterial blood sampling, pulmonary function testing, and heart function measurements.

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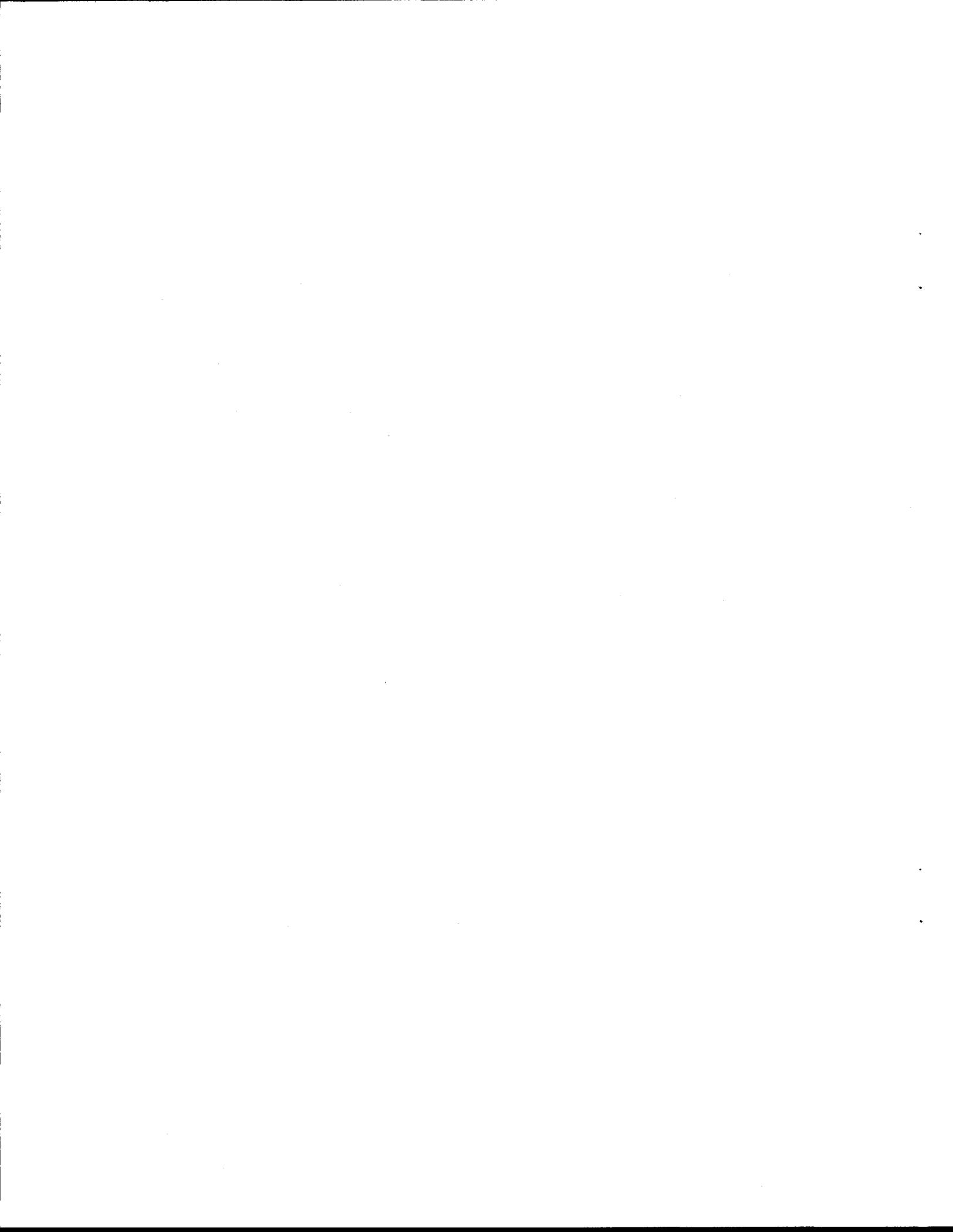
(5) The Committee makes no determination whether licensure of respiratory care therapists would have a substantial adverse economic impact upon consumers of the respiratory care therapists' services.

(6) The public cannot be effectively protected by other means.

Training, examination, and certification of respiratory care therapists is completely voluntary at this time. Although some hospitals and home health care agencies require certification or equivalent training, many do not. This is particularly troubling in the home health care setting. By law, persons working for home health care agencies, including respiratory therapists, must be under the supervision of either a licensed physician or a registered nurse in providing services in accordance with the orders of the physician responsible for the care of the patient and under a plan of treatment established by such physician (10 N.C.A.C. 3L.0205(c)). However, this supervision is not the same direct supervision by a physician provided in the hospital setting.

The law also requires that persons who work for home health care agencies be assigned only to those duties for which they are trained and competent to perform (10 N.C.A.C. 3L.0207(c)). However, there are no mandatory standards to determine whether an individual, such as a respiratory therapist, is "trained and competent" to perform the work to which he is assigned by the home health care agency.

Thus, although there has been some attempt to regulate the adequacy, reliability, and safety of respiratory care services, both through health care providers' employment requirements and through general laws relating to home health care personnel, these regulations and restraints do not seem to effectively protect the public.



LEGISLATIVE COMMITTEE ON
NEW LICENSING BOARDS

Preliminary Assessment Report on the Licensing of
Dietitians/Nutritionists

(Senate Bill 420)
(House Bill 428)

August 10, 1987



RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration at this time to legislation proposing the licensure of dieticians and nutritionists.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of dietetics/nutrition will not substantially harm or endanger the public health, safety, or welfare.

The practice of dietetics and nutrition care involves nutritional counseling, nutritional needs assessment, and the evaluation, development and maintenance of appropriate standards of quality in food and nutrition services. Although the number of consumers using the services of dieticians and nutritionists is unknown, at least 1/2 million consumers are expected to be direct users of these services through hospitals, clinics, child care, prisons, and school food service.

The increase in diet centers and the promotion by some of the centers and individuals of low-calorie diets, high vitamin and mineral supplements, and expensive food products, some of which are either of little or no nutritional value and some of which may lead to medical problems, does pose a threat to the public health, safety, and welfare, especially considering the large number of customers of diet centers and other dietetic services.

However, requiring the licensure of dieticians and nutritionists is not the least restrictive means available of addressing these concerns. More extensive regulation by the Federal Food and Drug Administration over labeling and potency of vitamins and minerals may be a more appropriate means of regulating the diet industry. In addition, prosecution under existing laws that prohibit unfair business practices, such as false or misleading advertising, and prosecution of persons whose use of dietary and nutritional advice or "prescriptions" constitutes the unlawful practice of medicine are already

appropriate remedies for the public in many cases and may actually deter incompetent service.

(2) The practice of dietetics/nutrition possesses qualities that distinguish it from ordinary labor.

The practice of dietetics/nutrition is distinguishable from ordinary labor since a minimum level of knowledge about vitamins and minerals, the potencies at which they are most useful and/or toxic, and their application to specific nutritional or dietary needs is required in order to offer sound nutritional or dietetic advice.

(3) The practice of dietetics/nutrition requires specialized skill and training.

Some degree of training beyond that required of ordinary endeavors is required in order to practice dietetics and nutritional care competently. The Committee makes no determination what level of training and skills would be sufficient to reach a minimum level of competency.

(4) A substantial majority of the public have sufficient knowledge or experience to evaluate the competence of dieticians and nutritionists.

A substantial majority of the public have the knowledge and experience to evaluate the competence of dieticians and nutritionists. Although there are many documented cases of the rendition of incompetent, improper, or fraudulent dietetic and nutritional services, it nevertheless appears that a substantial majority of the public is capable of evaluating the services offered by and the competency of dieticians and nutritionists. The enactment of federal legislation in 1976 prohibiting the Food and Drug Administration from placing maximum limits on the potency, combination, and number of vitamins, minerals, and other food ingredients recommended by dieticians, nutritionists, weight counselors, and others (Public Law 94-278, 21 U.S.C. §350) also reveals Congress' apparent belief that the public is capable of evaluating for itself the products and services offered by dieticians and nutritionists.

(5) The Committee makes no determination whether licensure of dieticians and nutritionists would have a substantial adverse economic impact upon consumers of the dieticians' and nutritionists' services.

(6) The public can be effectively protected by other means.

Licensure is not the most appropriate means to regulate the practice of nutrition and dietetics. The public is already protected to a great extent by the following:

(1) Dieticians are not authorized to prescribe or dispense controlled substances; the substances "prescribed" by dieticians are merely foods or over-the-counter vitamins and minerals. The only potential concern is the "prescription" of an excessive amount of vitamins and minerals that is either of little or no nutritional value or approaches toxic levels. Concerns about toxic "prescriptions" do not appear to be great, especially in light of the federal legislation discussed earlier in this report; and

(2) Special need populations such as hospital patients and public school children are already protected by the imposition of minimum qualifications upon nutritionists and dieticians serving these populations. For example, the food service supervisors in North Carolina's public schools are required to have either a Master's Degree and 1 year of food service experience or a Bachelor's Degree and 2 years of food service experience. Nearly all the supervisors have obtained their degrees in food service-related fields. Individual dietetic needs are referred by the supervisors to qualified dieticians for further assessment and action. Many of the State's public and private hospitals also employ or contract with only qualified dieticians and nutritionists.

Further protection could be obtained by action at the federal level to restrict the potencies, combination or number of vitamins and/or minerals issued to persons by dieticians, nutritionists or others. In addition, voluntary reporting and exposure of incompetent or unqualified practitioners by physicians, registered dieticians, and others who have come into contact with former customers and patients of the practitioners will help cleanse the profession of incompetent and untrained persons.



**LEGISLATIVE COMMITTEE ON
NEW LICENSING BOARDS**

**Final Assessment Report on the Licensing of
Dietitians/Nutritionists**

**(Senate Bill 420)
(House Bill 428)**

August 12, 1987



RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly consider legislation proposing the licensure of dietitians and nutritionists.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of dietetics/nutrition will substantially harm or endanger the public health, safety, or welfare.

The practice of dietetics and nutrition care involves nutritional counseling, nutritional needs assessment, and the evaluation, development and maintenance of appropriate standards of quality in food and nutrition services. Nutritional needs assessment includes assessment of diet history and past medical history, food and drug interaction, behavior modification, and related needs assessments. Although the number of consumers using the services of dietitians and nutritionists is unknown, at least 1/2 million consumers are expected to be direct users of these services through hospitals, clinics, child care, prisons, and school food service.

The increased promotion of low-calorie diets, high vitamin and mineral supplements, and expensive food products, some of which are either of little or no nutritional value and some of which may lead to medical problems, poses a threat to the public health, safety, and welfare, especially considering the large number of customers of diet centers and other dietetic services. In addition, there are numerous documented instances in which grossly unqualified practitioners and "self-styled" nutritionists have incompetently rendered advice to their patients, leading to serious medical problems for the patients.

The practice of dietetics and nutritional care involves specialized knowledge and training and has a substantial impact upon the health of patients and customers of dietitians, nutritionists, diet centers, and other dietetic services. The unregulated practice of dietetics and nutritional care will substantially harm or endanger the public health, safety, or welfare.

(2) The practice of dietetics/nutrition possesses qualities that distinguish it from ordinary labor.

The practice of dietetics/nutrition is distinguishable from ordinary labor since knowledge of physiology, anatomy, chemistry, and related medical disciplines, and knowledge about foods, vitamins and minerals, the potencies at which vitamins are most useful and/or toxic, and their application to specific nutritional or dietary needs is required in order to offer sound nutritional or dietetic advice.

(3) The practice of dietetics/nutrition requires specialized skill and training.

Some degree of training beyond that required of ordinary endeavors is required in order to practice dietetics and nutritional care competently. The two bills proposing to require licensure of dietitians require at least a baccalaureate degree with a major course of study in human nutrition, dietetics, or related areas, plus 900 hours of supervised clinical experience and passage of an examination.

(4) A substantial majority of the public do not have sufficient knowledge or experience to evaluate the competence of dietitians and nutritionists.

A substantial majority of the public do not have the knowledge and experience to evaluate the competence of dietitians and nutritionists. There has been a great deal of misplaced reliance on the media by consumers of dietetic and nutrition care services. Use of the telephone book's Yellow Pages does not give the public a true indication of which practitioners are competent since there are currently no restraints on a practitioner's advertising as a dietitian or nutritionist. It has been shown to the Committee that a large number of practitioners are misrepresenting or falsifying their credentials.

(5) The Committee makes no determination whether licensure of dieticians and nutritionists would have a substantial adverse economic impact upon consumers of the dieticians' and nutritionists' services.

(6) The public cannot be effectively protected by other means.

It appears that current regulations and restraints on the provision of dietetic and nutritional care services as well as current health care policies are insufficient to protect the public. There are available to the public existing laws to deal with deceptive and misleading advertising, the unlawful practice of medicine, and the labeling of vitamins and minerals, but they do not appear to be sufficient to protect the public. For example, despite years of effort by the Food and Drug Administration, attempts to limit the potencies, combination, and numbers of vitamins issued to consumers by dieticians, health food stores, etc. have failed; Congress has since prohibited the FDA from placing such limits on vitamins and minerals, except for special populations such as children and pregnant women (21 U.S.C. §350, 1976).

In addition, current health care policies and employment practices of institutions do not protect all segments of the population. Special needs populations such as hospital patients and public school children are to some extent protected by the imposition of minimum qualifications upon nutritionists and dieticians serving those populations. For example, the food service supervisors in North Carolina's public schools are required to have either a Master's Degree and 1 year of food service experience or a Bachelor's Degree and 2 years of food service experience. Nearly all the supervisors have obtained their degrees in food service-related fields. Individual dietetic needs are referred by the supervisors to qualified dieticians for further assessment and action. Many of the State's public and private hospitals also employ or contract with only qualified dieticians and nutritionists.

Final Report

Page Four

Senate Bill 420; House Bill 428

However, two of the most vulnerable special needs populations -- the elderly and adolescents -- are largely unprotected by the institutional safeguards found in schools and many hospitals. North Carolina's attraction as a retirement community is quickly increasing the State's elderly population. Adolescent experiences with anorexia, bulimia, and related disorders and dietary problems also render the adolescent population vulnerable to an unregulated dietetic industry.

Furthermore, hospitals are now encouraging more outpatient treatment of patients, thus leading to the provision of more services by home health care agencies. State institutions such as prisons are also served by food service supervisors who do not have nearly the same training and experience as public school food service supervisors and registered dietitians.

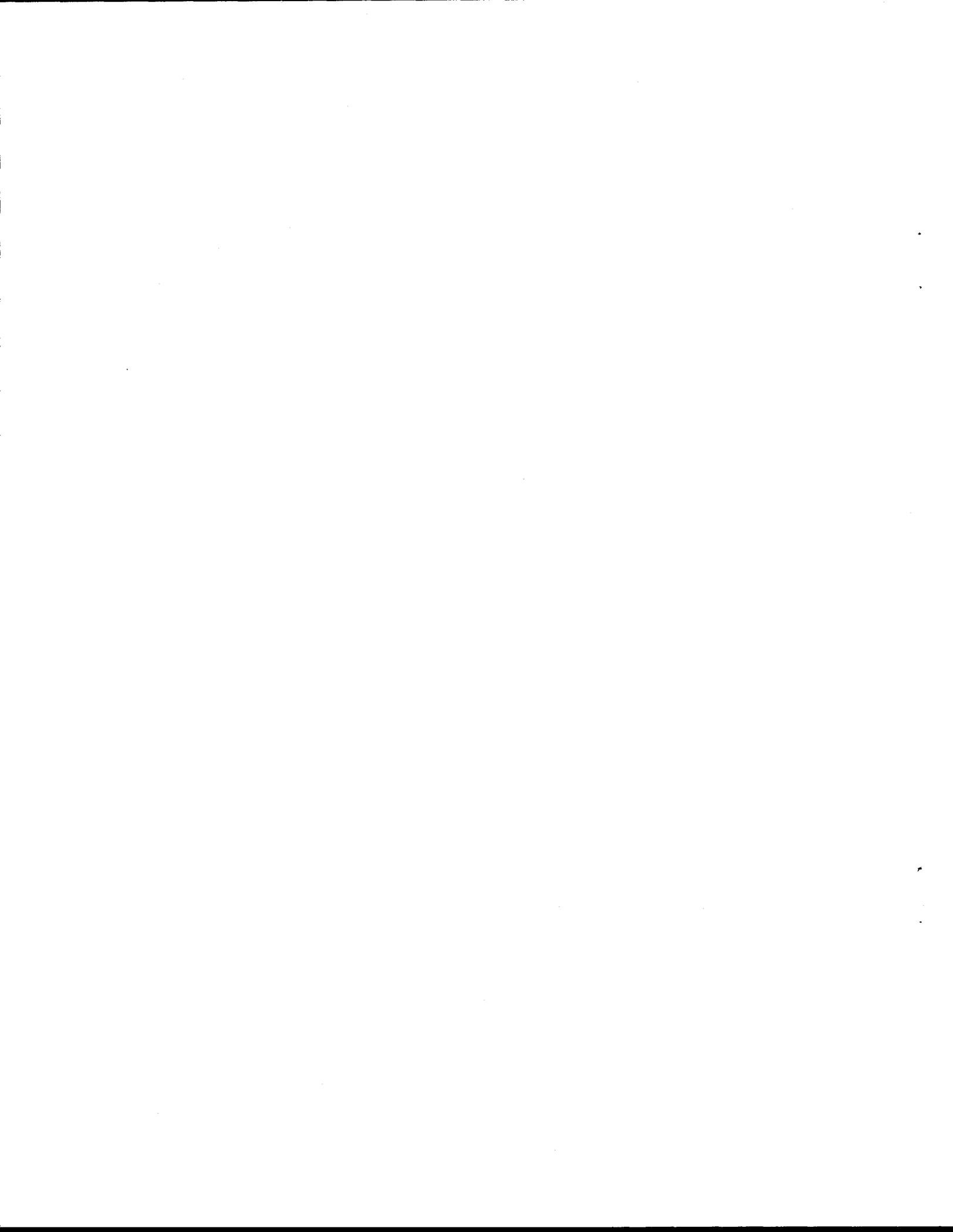
Creation of a licensing board would give the dietetic and nutritional care industry oversight of the profession and legal recourse to remove or exclude incompetent practitioners.

**LEGISLATIVE COMMITTEE ON
NEW LICENSING BOARDS**

**Preliminary Assessment Report on the Licensing of
Fire Protection Contractors**

(Senate Bill 704)

August 10, 1987



RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to legislation proposing to license fire protection contractors.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of fire protection contractors will not substantially harm or endanger the public health, safety, or welfare.

Fire protection contractors install, inspect, service, and repair fire sprinkler systems. Systems that are improperly installed can threaten both property and human life because of water leakage or failure to properly function during a fire.

However, requiring the licensure of fire protection contractors is not the most appropriate means of assuring the public that fire protection systems will be properly installed. The danger to building owners from sprinkler leakage and the danger to the building owners, occupants, and visitors from fire could be better addressed by adequate inspection and testing of the fire sprinkler systems prior to occupancy of the building.

There is insufficient evidence that the failure to require licensing of fire protection contractors substantially threatens the public's safety.

(2) The practice of fire protection contracting does not possess qualities that distinguish it from ordinary labor.

Although general contracting and certain specialty contracting (such as electrical, plumbing/heating, and refrigeration) require licensed practitioners, many other areas of contracting do not. Although the U.S. Department of Labor recognizes sprinkler-fitters as a specialty of the pipe trades (according to the Questionnaire, #V.A.), there has been no documentation that the installation of sprinkler systems involves qualities that distinguish it from ordinary labor.

(3) The practice of fire protection contracting does not require specialized skill and training.

Although a certain level of training, knowledge, and skill is required to install fire sprinklers, and although businesses specializing in the installation of fire protection systems may have voluntarily imposed upon themselves even higher standards of training, knowledge, and skill, it appears to the Committee that fire protection systems can be installed without the degree of specialized skill and training contemplated by the assessment review. The level of training, skill, and knowledge required to competently install fire protection systems appears to be no greater than the level required for other ordinary, unlicensed professions, including other contracting professions.

(4) A substantial majority of the public have sufficient knowledge or experience to evaluate the competence of fire protection contractors.

Generally, the persons who will use the services of fire protection contractors are the developers, builders, owners, and/or tenants of commercial and industrial buildings. Unlike average members of the public, these persons are generally sophisticated, knowledgeable businessmen who are in a better position than the average person to evaluate the services offered by and the competence of fire protection contractors. A substantial majority of the public that actually uses the services of fire protection contractors would therefore have sufficient knowledge to evaluate these contractors.

(5) The Committee makes no determination whether licensure of fire protection contractors would have a substantial adverse economic impact upon consumers of their services.

(6) The public can be effectively protected by other means.

Automatic sprinklers are required by statute and/or by Building Code regulation in certain types of structures (N.C. Gen. Stat. §69-29; State Bldg. Code, §901.7). The North Carolina State Building Code provides that the installation of automatic sprinklers must be reasonably safe to persons and property (§901.8). Only approved sprinklers and devices may be used in

automatic sprinkler systems and the complete layout of the system must be submitted to the building inspector for approval before installation (§901.1).

The local building inspectors responsible for inspecting the installation of automatic sprinklers are required by law to be qualified for their work and must be certified by the North Carolina Code Officials Qualification Board. The certification sets forth the performance level (for example, certain types and sizes of structures) for which the inspector is qualified. (N.C. Gen. Stat. §143-151.13, §153A-351.1, §160A-411.1).

In addition, individual insurance companies and insurance service organizations also inspect fire sprinklers for rating purposes. Although it is not their duty to enforce the Building Code, there is no documentation that their inspections are in any way inadequate. An insurer would have a great deal of incentive to perform or have performed on his behalf a thorough inspection because of the enormous risk to be undertaken in insuring the structure.

The information provided in the Questionnaire states that the local Building Code inspectors "lack the specialized training on the codes" to inspect fire sprinklers and enforce fire sprinkler regulations (Questionnaire, I. A.). If improper installation of fire sprinklers is going undetected by local building inspectors, the appropriate recourse would be to increase the training or awareness of inspectors with respect to fire sprinklers rather than requiring the contractors who install the sprinklers to be licensed.

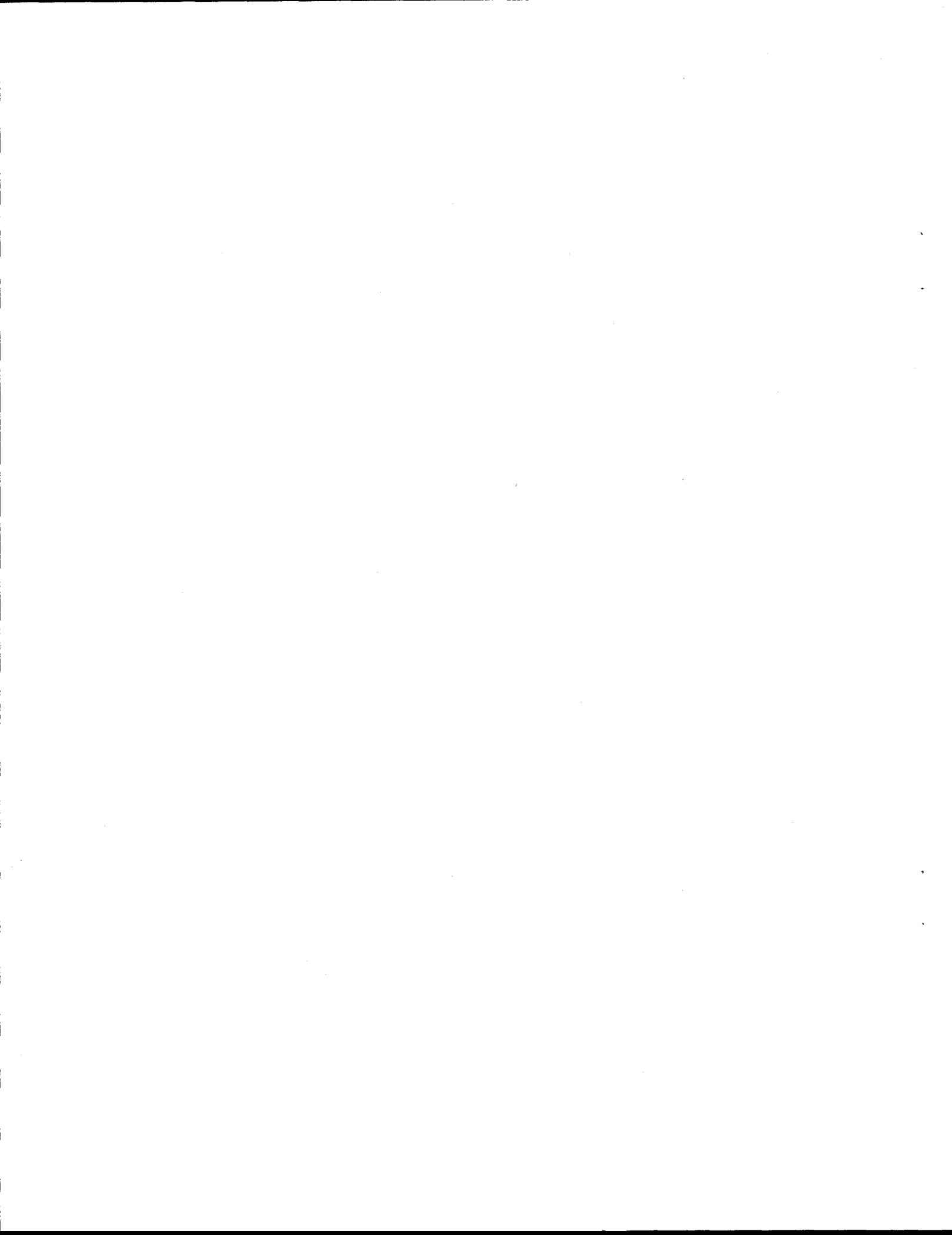


LEGISLATIVE COMMITTEE ON
NEW LICENSING BOARDS

Final Assessment Report on the Licensing of
Fire Protection Contractors

(Senate Bill 704)

August 12, 1987



RECOMMENDATION:

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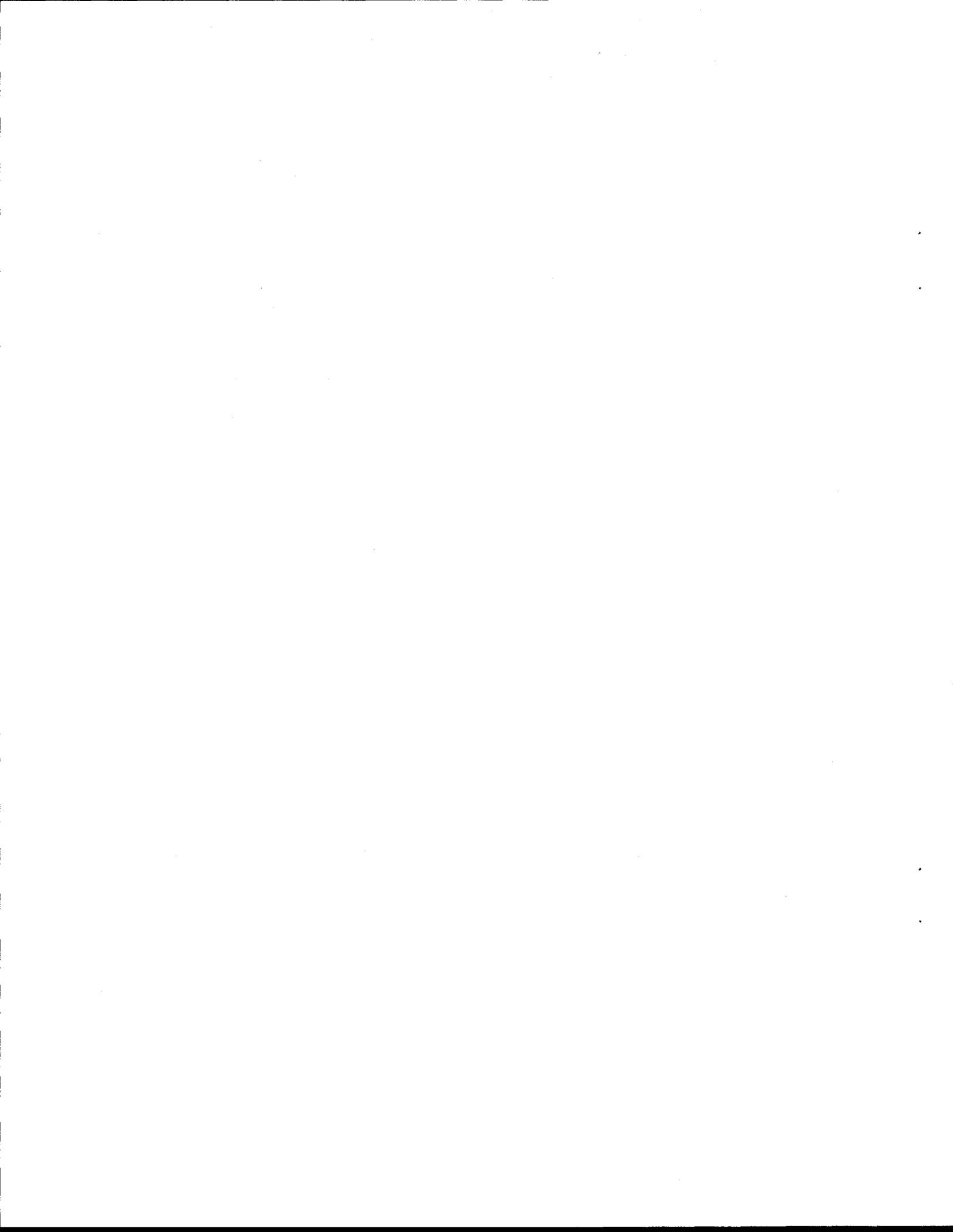
Automatic sprinklers are required by statute and/or by Building Code regulation in certain types of structures (N.C. Gen. Stat. §69-29; State Bldg. Code, §901.7). The North Carolina State Building Code provides that the installation of automatic sprinklers must be reasonably safe to persons and property (§901.8). Only approved sprinklers and devices may be used in

automatic sprinkler systems and the complete layout of the system must be submitted to the building inspector for approval before installation (§901.1).

The local building inspectors responsible for inspecting the installation of automatic sprinklers are required by law to be qualified for their work and must be certified by the North Carolina Code Officials Qualification Board. The certification sets forth the performance level (for example, certain types and sizes of structures) for which the inspector is qualified. (N.C. Gen. Stat. §143-151.13, §153A-351.1, §160A-411.1).

In addition, individual insurance companies and insurance service organizations also inspect fire sprinklers for rating purposes. Although it is not their duty to enforce the Building Code, there is no documentation that their inspections are in any way inadequate. An insurer would have a great deal of incentive to perform or have performed on his behalf a thorough inspection because of the enormous risk to be undertaken in insuring the structure.

The information provided in the Questionnaire states that the local Building Code inspectors "lack the specialized training on the codes" to inspect fire sprinklers and enforce fire sprinkler regulations (Questionnaire, I. A.). If improper installation of fire sprinklers is going undetected by local building inspectors, the appropriate recourse would be to increase the training or awareness of inspectors with respect to fire sprinklers rather than requiring the contractors who install the sprinklers to be licensed.



LEGISLATIVE COMMITTEE ON
NEW LICENSING BOARDS

Preliminary Assessment Report on the Licensing of
Counselors

(Senate Bill 432)

August 10, 1987



RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to legislation proposing to license counselors.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of counseling will not substantially harm or endanger the public health, safety, or welfare.

In 1983, the General Assembly created the North Carolina Board of Registered Practicing Counselors and required all persons using the title "Registered Practicing Counselor" to meet minimum educational and experience requirements and to register with the Board. The Board is expressly prohibited from regulating individuals providing counseling services who do not use the title "Registered Practicing Counselor" (N.C. Gen. Stat. §90-334(i)).

Many persons advertise themselves as "counselors," "grief counselors," "pet counselors," "weight loss counselors," etc. without being required to meet any educational or experience requirements and without being subject to binding ethical restraints. It is estimated that at any given time, nearly twenty percent of the population needs some type of counseling or related assistance for emotional problems.

However, the need for licensure of counselors has not been demonstrated to the Committee. The voluntary registration program currently provided by statute provides the public with an opportunity to identify and employ the services of trained, knowledgeable counselors.

(2) The practice of counseling involves a wide range of services, some of which possess qualities that distinguish it from ordinary labor and some of which do not.

Not all services provided by counselors require or should require minimum educational or experience qualifications. There

are many instances in which a person lacking the Master's Degree and two years of experience (required of Registered Practicing Counselors) can appropriately provide certain counseling services.

(3) The practice of counseling involves a wide range of services, some of which require specialized skill and training, and some of which do not.

"Counseling services" range from assisting an individual in understanding and addressing his emotional problems to the interpretation of scientific data and research on human subjects. It is the Committee's belief that most unregistered "counselors" primarily offer the former type of services and do not generally engage in scientific testing, scientific data interpretation, and human research. The services offered by these counselors can be performed competently without a Master's Degree and two years of experience. There is a need in the marketplace for these practitioners.

Counseling services such as scientific testing, data interpretation, and human research may require the degree of specialized skill and training contemplated by Senate Bill 420. However, persons possessing this amount of skill and training and wishing to engage in all aspects of counseling are afforded an opportunity through the statutorily-created certification program to distinguish themselves from other counselors. Although it is true that an untrained person is not prohibited from performing those counseling services requiring specialized skill and training, the Committee believes that a substantial majority of persons providing counseling services who are not registered with the North Carolina Board of Registered Practicing Counselors are offering services that do not require the level of education and experience mandated in Senate Bill 432.

(4) A substantial majority of the public have sufficient knowledge or experience to evaluate the competence of counselors.

The current statutory certification program is sufficient to allow the public to distinguish well-trained counselors and to select the services of a competent, registered practicing counselor.

(5) The Committee makes no determination whether licensure of counselors would have a substantial adverse economic impact upon consumers of their services.

(6) The public can be effectively protected by other means.

The current statutory certification program sufficiently protects the public by giving the public a means of immediately identifying counselors with sufficient training, knowledge, experience, and skills to competently perform any of the various counseling services. The public is further protected in the counseling field by the required licensure and regulation of psychologists (N.C. Gen. Stat. §90-270.1 et seq.) and a statutory certification program for marital and family counselors (N.C. Gen. Stat. §90-270.45 et seq.) that is similar to the Registered Practicing Counselors certification law.



LEGISLATIVE COMMITTEE ON
NEW LICENSING BOARDS

Final Assessment Report on the Licensing of
Counselors

(Senate Bill 432)

August 12, 1987



RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to legislation proposing to license counselors.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of counseling will not substantially harm or endanger the public health, safety, or welfare.

In 1983, the General Assembly created the North Carolina Board of Registered Practicing Counselors and required all persons using the title "Registered Practicing Counselor" to meet minimum educational and experience requirements and to register with the Board. The Board is expressly prohibited from regulating individuals providing counseling services who do not use the title "Registered Practicing Counselor" (N.C. Gen. Stat. §90-334(i)).

Many persons advertise themselves as "counselors," "grief counselors," "pet counselors," "weight loss counselors," etc. without being required to meet any educational or experience requirements and without being subject to binding ethical restraints. It is estimated that at any given time, nearly twenty percent of the population needs some type of counseling or related assistance for emotional problems.

However, the need for licensure of counselors has not been demonstrated to the Committee. The voluntary registration program currently provided by statute provides the public with an opportunity to identify and employ the services of trained, knowledgeable counselors.

(2) The practice of counseling involves a wide range of services, some of which possess qualities that distinguish it from ordinary labor and some of which do not.

Not all services provided by counselors require or should require minimum educational or experience qualifications. There

are many instances in which a person lacking the Master's Degree and two years of experience (required of Registered Practicing Counselors) can appropriately provide certain counseling services.

(3) The practice of counseling involves a wide range of services, some of which require specialized skill and training, and some of which do not.

"Counseling services" range from assisting an individual in understanding and addressing his emotional problems to the interpretation of scientific data and research on human subjects. It is the Committee's belief that most unregistered "counselors" primarily offer the former type of services and do not generally engage in scientific testing, scientific data interpretation, and human research. The services offered by these counselors can be performed competently without a Master's Degree and two years of experience. There is a need in the marketplace for these practitioners.

Counseling services such as scientific testing, data interpretation, and human research may require the degree of specialized skill and training contemplated by Senate Bill 420. However, persons possessing this amount of skill and training and wishing to engage in all aspects of counseling are afforded an opportunity through the statutorily-created certification program to distinguish themselves from other counselors. Although it is true that an untrained person is not prohibited from performing those counseling services requiring specialized skill and training, the Committee believes that a substantial majority of persons providing counseling services who are not registered with the North Carolina Board of Registered Practicing Counselors are offering services that do not require the level of education and experience mandated in Senate Bill 432.

(4) A substantial majority of the public have sufficient knowledge or experience to evaluate the competence of counselors.

The current statutory certification program is sufficient to allow the public to distinguish well-trained counselors and to select the services of a competent, registered practicing counselor.

(5) The Committee makes no determination whether licensure of counselors would have a substantial adverse economic impact upon consumers of their services.

(6) The public can be effectively protected by other means.

The current statutory certification program sufficiently protects the public by giving the public a means of immediately identifying counselors with sufficient training, knowledge, experience, and skills to competently perform any of the various counseling services. The public is further protected in the counseling field by the required licensure and regulation of psychologists (N.C. Gen. Stat. §90-270.1 et seq.) and a statutory certification program for marital and family counselors (N.C. Gen. Stat. §90-270.45 et seq.) that is similar to the Registered Practicing Counselors certification law.



LEGISLATIVE COMMITTEE ON
NEW LICENSING BOARDS

Preliminary Assessment Report on the Licensing of
Nail Sculptors

(House Bill 1207)

August 10, 1987



RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly do not consider legislation proposing to license nail sculptors.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of nail sculpting will not substantially harm or endanger the public health, safety, or welfare.

The practice of nail sculpting is a relatively new technology that involves the application of an acrylic base to a person's nails, followed by the shaping of the nails to repair them, make them longer, etc. Manicuring is a different type of nail treatment that involves filing, cleaning, and polishing of nails and does not involve the artificial construction of nails through the use of an acrylic base.

N.C. Gen. Stat. §88-30 currently provides in part as follows:

"A person shall be a registered manicurist to engage in the practice of manicuring or pedicuring in a cosmetic art shop, beauty parlor or hairdressing establishment and that person may be a registered manicurist without being a registered cosmetologist."

Although there is other statutory language (N.C. Gen. Stat. §80-1, §80-2) that appears to give the Board of Cosmetic Arts power to regulate manicurists practicing outside of beauty shops, it is generally understood that N.C. Gen. Stat. §80-30 (along with N.C. Gen. Stat. §80-22(6)) is controlling. Therefore, the Board lacks the authority to regulate manicurists practicing outside of beauty shops. House Bill 1207 would give the Board this authority.

There has been no showing of a need to require the licensure of manicurists and nail sculptors practicing outside of beauty shops. The imposition of licensing in 1963 for manicurists working in beauty shops appears to have been a mere incidence to the licensing and sanitary inspection of beauty shops. Concerns about the spread of germs and contagious diseases at unlicensed and uninspected nail sculpting facilities are legitimate, but there have not been extensive complaints about sanitary conditions at these facilities to justify mandatory licensing of persons providing these services and mandatory inspection of their shops.

(2) The practice of nail sculpting does not possess qualities that distinguish it from ordinary labor.

Nail sculpting does not possess any qualities that distinguish it from ordinary labor.

Note: When reviewing a bill that proposes to license an occupational group under an existing board, the Committee on New Licensing Boards is statutorily prohibited from assessing the need for the continued licensing of professions or occupations already licensed by that board (N.C. Gen. Stat. §120-149.2(4)(ii)). Since the Board of Cosmetic Arts already licenses manicurists who work in beauty shops, the Committee reserves comment on the need for the continued licensing of these beauty shop manicurists.

(3) The practice of nail sculpting does not require specialized skill and training.

The practice of nail sculpting does not require specialized skill and training. The fact that registered manicurists must complete 150 hours of training, apportioned as follows (pursuant to 21 N.C.A.C. 14K.0002), is not sufficient evidence that the practice of nail sculpting requires special skills or training:

| | |
|-----------|-----------------------|
| 100 hours | Actual practice |
| 25 hours | Arm and hand massage |
| 25 hours | Theory & salesmanship |

Again, this finding is restricted to nail sculptors working outside the beauty shop; this finding does not constitute a statement by the Committee concerning the need or absence of need for the continued licensing of manicurists working in beauty shops.

(4) A substantial majority of the public have sufficient knowledge or experience to evaluate the competence of nail sculptors.

Public users of nail sculpting services can judge for themselves the competence and qualifications of nail sculptors. Unsanitary facilities and practices will generally be visible to the attentive customer. The marketplace will itself eliminate incompetent practitioners.

(5) The Committee makes no finding whether licensure of nail sculptors would have a substantial adverse economic impact upon consumers of their services.

(6) The public can be effectively protected by other means.

The marketplace is sufficient to protect the public from incompetent nail sculptors. In addition, local health directors are authorized to investigate the causes of infectious, communicable, and other diseases (N.C. Gen. Stat. §130A-41(b)(3)) that might be traced back to a nail sculpting facility, thus assuring the public of an available means to identify and eliminate unsanitary facilities.

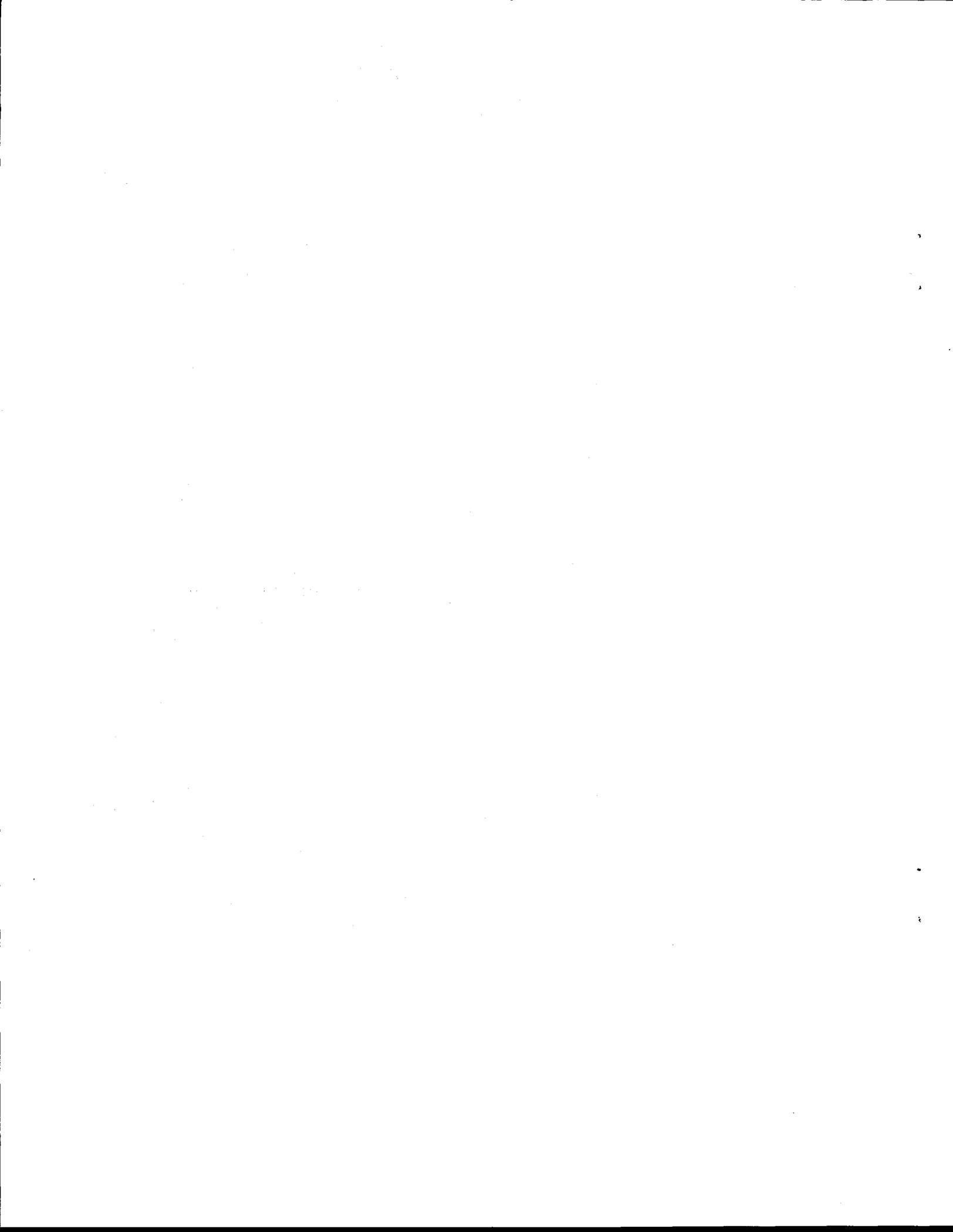


LEGISLATIVE COMMITTEE ON
NEW LICENSING BOARDS

Final Assessment Report on the Licensing of
Nail Sculptors

(House Bill 1207)

August 12, 1987



RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly do not consider legislation proposing to license nail sculptors.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of nail sculpting will not substantially harm or endanger the public health, safety, or welfare.

The practice of nail sculpting is a relatively new technology that involves the application of an acrylic base to a person's nails, followed by the shaping of the nails to repair them, make them longer, etc. Manicuring is a different type of nail treatment that involves filing, cleaning, and polishing of nails and does not involve the artificial construction of nails through the use of an acrylic base.

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There has been no showing of a need to require the licensure of manicurists and nail sculptors practicing outside of beauty shops. The imposition of licensing in 1963 for manicurists working in beauty shops appears to have been a mere incidence to the licensing and sanitary inspection of beauty shops. Concerns about the spread of germs and contagious diseases at unlicensed and uninspected nail sculpting facilities are legitimate, but there have not been extensive complaints about sanitary conditions at these facilities to justify mandatory licensing of persons providing these services and mandatory inspection of their shops.

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